

SB 273

## **SPONSOR'S REBUTTAL TO FISCAL NOTE**

Bill Number: 273 Date Prepared: Feb 19, 2013

Short Title: Revise Cultural + Historical Preservation Laws

Sponsor: Senator Stewart Peregoy

Fiscal Note Version & Date: 2/18/2013

**Generally, why do you disagree with the fiscal note?**

Section 106 of the National Historic Preservation Act already requires this process. There should be no additional cost for Agency (DNRC, DER, FWA). (See attached)

**Specifically, what in the fiscal note do you feel is flawed?**

(Describe specific assumptions, calculations, technical issues, etc.)

All of it. The assumption that this bill would require additional administration monetary support.

**What is your estimate of the fiscal impact?**

8 MOU X \$500 (cost of mileage, per diem, supplies and materials) \$4000<sup>00</sup>

~~Phone~~ Phone + Postage \$300<sup>00</sup>

Total  
\$4300<sup>00</sup>

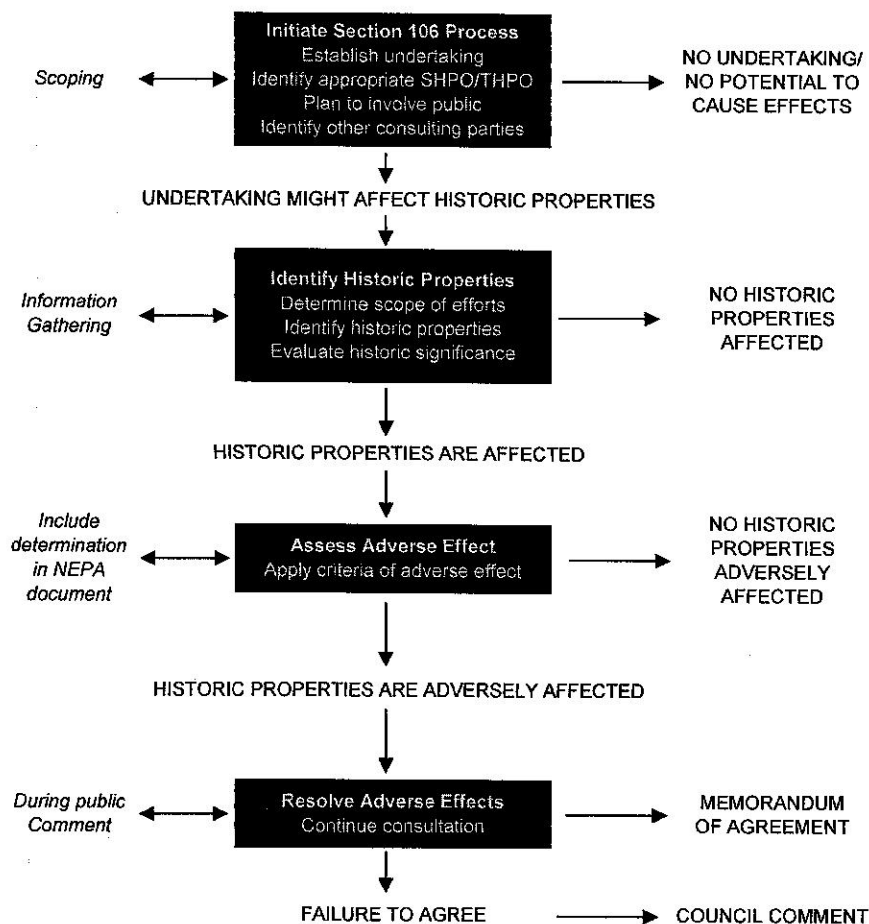
Sponsor Signature: Stewart Peregoy

SB 273

## Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. Historic properties in this instance include both standing structures and archaeological resources. The Section 106 process involves efforts to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties. In order to help identify these historic properties and provide community involvement, consulting parties are identified through coordination with the State Historic Preservation Officer (SHPO).

### SECTION 106 PROCESS



Source – Advisory Council on Historic Preservation

Consulting Parties are those individuals or agencies who have a vested interest in historic resources. Typically consulting parties consist of the SHPO, Historic Landmarks Foundation, any local historic preservation commissions, county historians and local historical societies, local government, and any other historical groups. A description of the proposed project, including a description of the preliminary Area of Potential Effect (APE), and an invitation to participate in the Section 106 process is issued to these individuals and agencies as part of the early coordination process. Additional consulting parties are identified through coordination with the SHPO.

The APE is the area in which an undertaking may cause direct or indirect changes in character or use of a historic property. The boundary of the APE is determined through the consideration of the effect of the undertaking in respect to visual and audible intrusions, changes in traffic patterns and alterations in land use or public access. Once an APE is established, historic properties are identified through coordination with the consulting parties. The historical significance of these properties is evaluated and an effect determination is made.

There are three possible types of effect determinations. Each of these effect determinations is made by the Federal Highway Administration. In the event a project is determined to have a "No Historic Properties Affected" or "No Adverse Effect" finding, FHWA delegates approval authority to the Indiana Department of Transportation (INDOT).

A "No Historic Properties Affected" finding indicates that there are no properties on, or eligible for inclusion on the National Register of Historic Places (NRHP) that would be impacted by the proposed project. It is possible for historic properties to be located within the APE and still have a project receive a "No Historic Properties Affected" finding.

A "No Adverse Effect" finding indicates that although historic resources are impacted by the proposed project, the impacts to these resources are such that they would not alter the properties listing or eligibility for the NRHP.

An "Adverse Effect" finding results when the historic characteristics of a resource are altered such that the resource's ability for inclusion on the NRHP is compromised. When this finding is established, a Memorandum of Agreement (MOA) is created and signed by the SHPO, the INDOT and the FHWA. The MOA details the mitigation measures that must be followed.

A description of the Section 106 Process is located at the Federal Highway Administration's website (<http://www.fhwa.dot.gov/indiv/106proc.htm>).

In the event an impasse is reached between regulatory agencies and the sponsoring federal agency funding the proposed project, the Advisory Council on Historic Preservation is contacted to act as an arbitrator. For more information on the Advisory Council, please visit their website (Advisory Council on Historic Preservation (<http://www.achp.gov/>)).

# Digest of Federal Resource Laws of Interest to the U.S. Fish and Wildlife Service

## Historic Preservation Acts

Historic Preservation Acts: there are various laws for the preservation of historic sites and objects.

*Antiquities Act* (16 U.S.C. 431 - 433) -- The Act of June 8, 1906, (34 Stat. 225) authorizes the President to designate as National Monuments objects or areas of historic or scientific interest on lands owned or controlled by the United States. The Act required that a permit be obtained for examination of ruins, excavation of archaeological sites and the gathering of objects of antiquity on lands under the jurisdiction of the Secretaries of Interior, Agriculture, and Army, and provided penalties for violations.

The Act of September 14, 1950, (64 Stat. 849) prohibited the extension or establishment of any National Monument in Wyoming without the express authorization of Congress.

*Archaeological Resources Protection Act* (16 U.S.C. 470aa - 470ll) -- Public Law 96-95, approved October 31, 1979, (93 Stat. 721) largely supplanted the resource protection provisions of the Antiquities Act for archaeological items.

This Act established detailed requirements for issuance of permits for any excavation for or removal of archaeological resources from Federal or Indian lands. It also established civil and criminal penalties for the unauthorized excavation, removal, or damage of any such resources; for any trafficking in such resources removed from Federal or Indian land in violation of any provision of Federal law; and for interstate and foreign commerce in such resources acquired, transported or received in violation of any State or local law.

Public Law 100-588, approved November 3, 1988, (102 Stat. 2983) lowered the threshold value of artifacts triggering the felony provisions of the Act from \$5,000 to \$500, made attempting to commit an action prohibited by the Act a violation, and required the land managing agencies to establish public awareness programs regarding the value of archaeological resources to the Nation.

*Archeological and Historic Preservation Act* (16 U.S.C. 469-469c) -- Public Law 86-523, approved June 27, 1960, (74 Stat. 220) as amended by Public Law 93-291, approved May 24, 1974, (88 Stat. 174) to carry out the policy established by the Historic Sites Act (see below), directed Federal agencies to notify the Secretary of the Interior whenever they find a Federal or Federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric or archaeologic data. The Act authorized use of appropriated, donated and/or transferred funds for the recovery, protection and preservation of such data.

*Historic Sites, Buildings and Antiquities Act* (16 U.S.C. 461-462, 464-467) -- The Act of August 21, 1935, (49 Stat. 666) popularly known as the Historic Sites Act, as amended by Public Law 89-249, approved October 9, 1965, (79 Stat. 971) declared it a national policy to preserve historic sites and objects of national significance, including those located on refuges. It provided procedures for designation, acquisition, administration and protection of such sites.

Among other things, National Historic and Natural Landmarks are designated under authority of this Act. As of January, 1989, 31 national wildlife refuges contained such sites.

*National Historic Preservation Act* of 1966 (16 U.S.C. 470-470b, 470c-470n) -- Public Law 89-665, approved October 15, 1966, (80 Stat. 915) and repeatedly amended, provided for preservation of significant historical features (buildings, objects and sites) through a grant-in-aid program to the States. It established a National Register of Historic Places and a program of matching grants under the existing National Trust for Historic Preservation (16 U.S.C. 468-468d). The Act established an Advisory Council on Historic Preservation, which was made a permanent independent agency in Public Law 94-422, approved September 28, 1976 (90 Stat. 1319). That Act also created the Historic Preservation Fund. Federal agencies are directed to take into account the effects of their actions on items or sites listed or eligible for listing in the National Register.

As of January, 1989, 91 historic sites on national wildlife refuges have been placed on the National Register.

Return to Resource Laws

# Antiquities Act of 1906

## AS AMENDED

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This Act became law on June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) and has been amended once. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

16 U.S.C. 433,  
Penalties for damage,  
destruction, etc. of  
antiquities

### Section 1

Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.

16 U.S.C. 431,  
Proclamation of  
national monuments,  
reservation of lands,  
etc.

### Section 2

The President of the United States is authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected. When such objects are situated upon a tract covered by a bona fide unperfected claim or held in private ownership, the tract, or so much thereof as may be necessary for the proper care and management of the object, may be relinquished to the Government, and the Secretary of the Interior is hereby authorized to accept the relinquishment of such tracts in [sic] behalf of the Government of the United States.

16 U.S.C. 431a,  
Limitation on more  
national monuments  
in Wyoming

No further extension or establishment of national monuments in Wyoming may be undertaken except by express authorization of Congress.

## Antiquities Act of 1906

16 U.S.C. 432,  
Permits for excavation,  
etc.

### Section 3

Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity upon the lands under their respective jurisdictions may be granted by the Secretaries of the Interior, Agriculture, and Army to institutions which they may deem properly qualified to conduct such examination, excavation, or gathering, subject to such rules and regulation as they may prescribe: *Provided*, That the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums.

16 U.S.C. 432,  
Rules and regulations

### Section 4

The Secretaries of the departments aforesaid shall make and publish from time to time uniform rules and regulations for the purpose of carrying out the provisions of this Act.